IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLICATION NO.17 OF 2007
IN
CRI.WRIT PETITION NO.19 OF 2007

Mrs.Hiral R.Salia ..Petitioner

Vs.

The State of Maharashtra
& Ors. ..Respondents

Mr.Ganesh Gole Advocate for Petitioner
Mrs.A.S.Pai A.P.P. for State

CORAM: SMT.RANJANA DESAI &
SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 23, 2007

P.C.

1. On 11.12.2006, Writ Petition No.2329 of 2006 was allowed to be withdrawn with the following order:

> "It has been brought to the notice of this Court that 'B' summary has already been filed by the Police. While granting the said summary, the Magistrate will hear the Petitioner and at that time, the Petitioner is having a liberty to pray for rejection of 'B' Summary on the basis of appropriate proceedings. Therefore, learned Counsel states that he may be allowed to withdraw the Petition with further liberty to place all the points raised in this Petition before the Magistrate

> in opposing ‘B’ summary proceedings. He further states that liberty may be granted to the Petitioner to file fresh petition if the occasion arises".

2. When this order was passed, the concerned Police Office from Meghwadi Police Station was present. It is clear from the order that the learned Magistrate was to give hearing to the Petitioner if he were to decide to grant ‘B’ summary. It appears that this order was not communicated to the learned Magistrate. Resultantly, on 21.12.2006, ‘B’ summary was granted without hearing the petitioner. The petitioner preferred another application being Application No.17 of 2007 in the present writ petition. The present writ petition was disposed of by giving similar direction on the assumption that ‘B’ summary was not granted.

3. Mr.Gole, the learned counsel for the petitioner has pointed out to us that in fact, ‘B’ summary was granted on 21.12.2006 without hearing the petitioner. That means, the direction of this Court as per order dated 11.12.2006, has not been followed by the learned Magistrate. At this stage, we do not want to go into the question as to who was to point out the order dated 11.12.2006 to the learned

Magistrate, because, our first anxiety is to ensure that the said order is complied with. Hence, we set aside the order dated 21.12.2006 passed by the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, granting 'B' summary. We make it clear that we have not considered the merits of the case and the order of the Magistrate is not set aside on merits. We direct the learned Metropolitan Magistrate to consider the application of the police for grant of 'B' summary on merits independently after giving hearing to the petitioner. The entire exercise should be completed within a period of four weeks from today. We make it clear that the order is passed in presence of P.S.I. Mr.Khamkar attached to Meghwadi Police Station so that samething is not repeated again.

4. Application is disposed of in the aforestated terms.

[SMT.V.K.TAHILRAMANI,J.] [SMT.RANJANA DESAI, J.]